LE COPY

FILED
SEP 29 1958
JAMES R. BROWNING, Clerk

No. 324

In the Supreme Court of the United States

OCTOBER TERM, 1958

GENERAL MOTORS CORPORATION, FRIGIDAIRE DIVISION, PETITIONER

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

CHARLES K. RICE,
Assistant Attorney General,

JOSEPH F. GOETTEN,
MYRON C. BAUM,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and Regulations involved	2
Statement	3
Argument	7
Conclusion	15
Appendix	16

CITATIONS

Cases:

Ford Motor Co. v. *United States*, 156 F. Supp. 554 ..... 8, 12

General Motors Corp., Frigidaire Div. v. *United States*, 121 F. Supp. 932, certiorari denied, 348 U. S. 942 14

General Motors Corp., Frigidaire Div. v. *United States*, 146 F. Supp. 220 14

General Motors Corp., Frigidaire Div. v. *United States*, 147 F. Supp. 739 ..... 7, 11, 13

Wisniewski v. *United States*, 353 U. S. 901 15

Statutes:

Internal Revenue Code of 1939:

Sec. 3405 (26 U. S. C. 1952 ed., Sec. 3405) 2, 8, 16

Sec. 3441(a) (26 U. S. C. 1952 ed., Sec. 3441(a)) 2, 8, 16

Sec. 3443(a) (26 U. S. C. 1952 ed., Sec. 3443(a)) 2, 12, 14, 17

Sec. 3443(b) (26 U. S. C. 1952 ed., Sec. 3443(b)) 2

Revenue Act of 1950, c. 994, 64 Stat. 906, Sec. 606 (26 U.S.C. 1952 ed., Sec. 3405) 2-3, 18

Miscellaneous: Page

H. Rep. No. 708, 72d Cong., 1st Sess., p. 29 (1932) (1939-1 Cum. Bull. (Part 2) 457, 485) ... 13

Treasury Regulations 46:

Sec. 316.12 ... 3, 19

Sec. 316.13 ... 3, 19

Sec. 316.14 ... 3, 14, 20

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 324

GENERAL MOTORS CORPORATION, FRIGIDAIRE DIVISION, PETITIONER

v.

THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Claims

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (Pet. 1a-8a) is not yet reported. The prior opinion of the Court of Claims in this case is reported at 147 F. Supp. 739.

JURISDICTION

The judgment of the Court of Claims was entered on July 16, 1958. The petition for a writ of certiorari was filed on August 29, 1958. Jurisdiction

of this Court is invoked under 28 U.S.C., Section 1255(1).

QUESTIONS PRESENTED

Taxpayer, a manufacturer of refrigerators and related products, sells its products with a one year warranty against defects in material or workmanship in the entire refrigerator and with an additional four year warranty against defects and workmanship in the sealed refrigerating unit. For the latter warranty, taxpayer makes a charge of $5 which is required of all purchasers except purchasers of ice cream cabinets and "multiple unit" purchasers. Both the one year warranty and the additional four year warranty are provided by virtually all other manufacturers of refrigerators without a separate charge being made therefor. The questions presented are:

1. Is the $5 charge for the four year warranty covering the sealed refrigerating unit a part of the sale price for purposes of computing the manufacturer's excise tax on such products?

2. Do the costs incurred by taxpayer in fulfilling either the one year warranty or the additional four year warranty constitute "a discount, rebate or allowance," under the provisions of the Internal Revenue Code, entitling taxpayer to a refund, *pro tanto*, of the manufacturer's excise tax paid upon the sale of its products?

STATUTES AND REGULATIONS INVOLVED

Sections 3405, 3441(a), and 3443(a)(2) and (b) of the Internal Revenue Code of 1939, Section 606

of the Revenue Act of 1950, c. 994, 64 Stat. 906, and Sections 316.12, 316.13 and 316.14 of Treasury Regulations 46 are set forth in pertinent part in the Appendix, *infra*, pp. 16-20.

STATEMENT

This action involves claims for refund of manufacturers' excise taxes paid for the period from January 1, 1945, through August 31, 1951. Taxpayer is a manufacturer of refrigerators and related products which sells its products to Frigidaire Sales Corporation (a wholly owned subsidiary) and independent distributors, who in turn resell the products to independent dealers for resale to ultimate consumers. (Pet. 8a, 18a-19a.)

Since the 1920's, manufacturers of refrigerators, including taxpayer, have sold their products with a one year warranty against defects in workmanship and materials. Under this warranty, taxpayer undertook to repair or replace any part or parts found defective within one year of the date of delivery to the consumer. (Pet. 10a-11a.)

Beginning in 1933, taxpayer offered to its purchasers a service agreement or replacement contract, to take effect after expiration of the one year warranty, covering the mechanical refrigerating unit in its refrigerators. The charge, which was optional, was, at first, $6 per year and, later, $10 for four years. (Pet. 13a-14a.)

In 1936, taxpayer discontinued these optional service agreements. Instead, it offered an additional four year warranty on the sealed refrigerating unit.

Under this warranty, it was obligated to repair or replace the sealed unit if it became defective within four years after the expiration of the one year warranty. During the period here involved, the charge for such four year warranty on refrigerators was fixed at $5 and taxpayer has required that this charge be paid by all purchasers.[1] Since 1936 or 1937, all other manufacturers of refrigerators, except possibly one, have provided their purchasers similar additional four year warranties on the sealed refrigerating units, but without making any separate charge therefor. (Pet. 14a-17a, 30a-31a.)

Although taxpayer's one year warranty covered the entire refrigerator (including the sealed unit) and the four year warranty covered the sealed unit only for the four years after the expiration of the one-year warranty, taxpayer phrased the warranty certificate delivered to its purchasers to show a total coverage of five years on the sealed refrigerating unit and of one year on all other parts. (Pet. 17a.) The certificate delivered to the purchasers reads as follows (Pet. 17a-18a):

> We warrant this Frigidaire refrigerator to be free from defects in material and workmanship under normal use and service.
>
> 5-YEAR WARRANTY ON SEALED IN MECHANICAL UNIT.—At any time within five years from the date of delivery to the original purchaser, we will repair or replace without cost to the owner

[1] For purchasers of ice cream cabinets and "multiple unit" purchasers, the charge has, at various times, been optional. (Pet. 15a-16a.)

or user the Sealed-in Mechanical Unit [consisting of the condenser, refrigerant control, freezer, Meter-Miser compressor unit, the tubing used to connect this equipment, and the Sealed Cold-Wall system, as shown in gold in the illustration at the right], or any part thereof, provided our examination shows that such apparatus is defective. This 5-Year Warranty applies only to the Sealed-in Mechanical Unit. All other parts of the refrigerator including temperature control and starting relay, are covered only by the 1-Year Warranty.

1-YEAR WARRANTY ON ENTIRE REFRIGERATOR.—At any time within one year from the date of delivery of this Frigidaire refrigerator to the original purchaser, we will repair or replace without cost to the owner or user any part or parts of the refrigerator, provided our examination shows such part or parts to be defective.

These warranties do not apply to light bulbs—or to any part of the Frigidaire refrigerator which has been subject to misuse, neglect, alteration, accident, or to damage caused by transportation after the original installation—or to any damage caused by flood, fire, or acts of God. Service calls, other than those covered by conditions specified in these warranties as our responsibility will be made at the expense of the user. These warranties apply only to refrigerators installed in the United States and Canada.

For many years, it has been the custom and general practice in the industry to give a warranty on the sealed refrigerating unit extending through the fifth

year of use, although no separate charge has generally been made for such warranty. (Pet. 30a-31a.)

Taxpayer expended approximately $6,000,000 to fulfill its obligations under the one year warranty applicable to products sold between January 1, 1945, and August 31, 1951 (the period involved in this action). The comparable expenditures in fulfilling obligations under the additional four year warranty on sealed refrigerating units amount to $12,714,-019.40. (Pet. 12a, 28a.) The $5 charge imposed by taxpayer for this warranty on sealed refrigerating units resulted in total collections of $27,333,912 during the period involved. (Pet. 9a.) Taxpayer originally did not pay any excise tax on the amounts yielded by the $5 charge, and the Commissioner assessed an additional excise tax of $2,484,901.09 on the amounts so collected. This additional tax having been paid as assessed, taxpayer filed claims for refund, and this suit followed. (Pet. 9a-10a.)

In the court below, taxpayer sought refund of the tax imposed upon the amounts collected for the four year warranty on the sealed refrigerating units, or, in the alternative, a refund proportionate to the expenses incurred in fulfilling such warranty. It also sought refund of that part of the tax proportionate to the expenses incurred in fulfilling its one year warranty on the entire refrigerators.

The Court of Claims, on taxpayer's motion for summary judgment, concluded that previous decisions in favor of this taxpayer for earlier years were in error and held that the expenses incurred in ful-

filling both the one year and four year warranties did not constitute a "rebate" or "allowance" within the meaning of the applicable provisions of the 1939 Code and thus did not entitle taxpayer to a *pro tanto* refund. It was of the opinion, however, that the amount charged for the four year warranty was not part of the sale price and was excludible in computing the tax, subject to the limitation that the amount charged be reasonably related to the expenses incurred under such warranty. This opinion was based upon the premise that such warranty constituted an agreement by the taxpayer beyond the usual manufacturer's warranty. The case was referred to a commissioner for proof of the reasonableness of the charge and for proof as to whether the four year warranty was customary in the trade. (Pet. 2a; 147 F. Supp. 739.)

Upon receipt of the commissioner's report and findings, from which it appeared that the four year warranty, as well as the one year warranty, was customary in the industry, the Court of Claims decided that the premise of its previous opinion had been erroneous and that, since the four year warranty was also customary in the trade, the $5 charge was not excludible from the sale price for purposes of computing the excise tax. Taxpayer was therefore denied recovery. (Pet. 1a-4a.)

ARGUMENT

The issues presented by the decisions below have received consideration only by the Court of Claims and there is accordingly no conflict with the decision

of any other court. The Court of Claims has held that customary manufacturer's warranties are not excludible from the sale price in computing the manufacturer's excise tax and that the expenses incurred in fulfilling such warranties do not constitute a "rebate" or "allowance" within the meaning of the applicable statutory provisions so as to entitle taxpayer to a *pro tanto* refund.[2] Prior decisions by the Court of Claims permitting recovery on the latter ground have been repudiated by that court as erroneous and do not present a basis for invoking certiorari jurisdiction.

1. Under Section 3405 of the Internal Revenue Code of 1939 (Appendix, *infra*, p. 16), an excise tax is imposed upon the sale by manufacturers of refrigerators and related products. This tax, so far as here pertinent, is measured by the sale price as that term is defined in Section 3441(a) (Appendix, *infra*, pp. 16-17). The latter section requires the inclusion in the sale price of "any charge incident to placing the article in condition packed ready for shipment" and excludes "transportation, delivery, insurance, installation" and other charges not required to be included by the foregoing provision. Taxpayer primarily contends that its additional four year warranty on the sealed refrigerating units of its refrigerators is a repair contract, the charge for which is not includible in the sale price as thus defined.

---

[2] The question whether the expenses incurred in fulfilling customary manufacturer's warranties constitute a "rebate" or "allowance" is also presented by the petition in No. 144, *Ford Motor Co.* v. *United States*, a case in which the Court of Claims rejected that theory of recovery, as it has here.

What is involved here is nothing more than the customary warranty that a product will remain free from defects in material and workmanship for a designated period. A compulsory charge for such warranty is as much a part of the sale price as if it were included in the sale price without specific itemization. The findings of the court below make it clear that, in the case of refrigerators, it has become customary in the industry to warrant not only the entire refrigerator to be free from defects for a period of one year, but also to warrant the sealed refrigerating unit to be free from such defects for an additional period of four years. The two warranties are thus indistinguishable. Taxpayer and other manufacturers had an obligation under such warranties to correct any defects which became manifest in either the refrigerator or the sealed refrigerating units within the periods specified. Taxpayer's separate statement of a compulsory charge for the refrigerating unit warranty does not transform the warranty into a repair or "service" contract. Taxpayer, like other manufacturers, sells its products with the representation (expressed by warranty) that the entire refrigerator will remain free from defects for one full year of use and that the sealed refrigerating unit will remain free from defects for a total of five years of use. Any charge for such warranty is clearly a "charge incident to placing the article in condition packed ready for shipment" and is thus includible as part of the sale price.

Taxpayer concedes (Pet. 10-11) that the customary manufacturer's warranty is subject to excise tax since the purchaser is only receiving what he had a

right to receive—a product free from defects. It seeks to distinguish its additional warranty on the sealed units, though it, too, is customary, as representing a different type of obligation. The facts do not bear this out. Taxpayer's warranty certificate, delivered to the purchasers, expressly states (Pet. 17a-18a):

> We warrant this Frigidaire refrigerator to be free from defects in material and workmanship under normal use and service.
>
> 5 YEAR WARRANTY ON SEALED IN MECHANICAL UNIT—At any time within five years from the date of delivery to the original purchaser, we will repair or replace without cost to the owner or user the Sealed-in Mechanical Unit * * *, provided our examination shows that such apparatus is defective.

Taxpayer's warranty is thus a plain representation that the materials and workmanship are such that the sealed units will continue to function satisfactorily for a period of five years.[3] Its obligation is no different from any other warranty of a product for a designated period; the length of the warranty period certainly does not affect the nature of the obligation.[4] The only difference is one of degree—the

---

[3] It is immaterial that the court below found that the service required on sealed units was substantially due to certain types of wear and tear. (Pet. 31a.) Taxpayer's warranty was that its units would not cease to function satisfactorily "under normal use", thus representing that these units were so built as to satisfactorily withstand five years of normal wear and tear.

[4] Compare the "lifetime" warranties under which certain products, such as tires and fountain pens, are sold.

extent of the sturdiness which the component parts of the article sold are represented to possess.

Moreover, taxpayer's own practice was to equate its two warranties. The warranty certificate provides for a five year warranty on the sealed unit, not a one year warranty plus a four year repair contract. (Pet. 17a.) Taxpayer did not purport to state any different obligation in relation to the sealed units for the second through fifth years of use as distinguished from the first year; it phrased its warranty as a single one for the sealed unit. The reason for this is apparent; virtually all other refrigerator manufacturers sold their products with a five year warranty on the sealed units and taxpayer was forced to compete on the same terms. It cannot obtain different tax treatment merely because it elected to segregate part of the price and list it as a compulsory separate charge.

Taxpayer's warranty of the sealed units thus stands on the same footing as its warranty of the entire refrigerator. It is a representation that the article or part warranted will be free from defects for the time stated; if such defects appear within the specified period, taxpayer must, as the court below stated in its prior opinion (147 F. Supp. 739, 742), "remedy them at his own expense, in order to make good his representation that the article sold was free from defects."

There is no inconsistency or conflict in the decisions of the court below on this point. In its prior opinion in this case, the Court of Claims clearly held (147 F. Supp. 739, 741) that there was excludible from the sale price only a

2. Section 3443(a)(2) (Appendix, *infra*, p. 17) permits a credit or refund of excise tax if the "price" of a taxable article is "readjusted * * * by a bona fide discount, rebate, or allowance." The amount of the tax which may be refunded or credited is that amount which is proportionate to the part of the price which is "refunded or credited" to the purchaser. Taxpayer's alternative contention is that the expenses incurred by it in fulfilling both its one year warranty on the refrigerators and its additional warranty on the sealed refrigerating units constitute a "rebate" or "allowance" entitling it to a refund, *pro tanto*, of the excise tax paid. This position, as the Court of Claims has twice held, is without merit.

As has been noted, the warranties here involved are nothing more than a manufacturer's warranty under which taxpayer had an obligation to correct any defects which became manifest during the period specified. In making expenditures for that purpose, taxpayer was not making any readjustment of the sales price, but was merely fulfilling its contractual duty and, incidentally, adding to its cost of production.[6] *General Motors Corp., Frigidaire Div.* v. *United States*, 147 F. Supp. 739; *Ford Motor Co.* v. *United States*, 156 F. Supp. 554. As the Court of

---

reasonable charge for the maintenance of an article "beyond the warranty period customary in the trade". It now appears as a matter of record that the warranty on the sealed units is not for a period beyond that customary, but is the usual manufacturer's warranty.

[6] The Court below found that expenditures under the one year warranty were treated by taxpayer as part of the cost of its product. (Pet. 12a.)

Claims stated in *General Motors Corp., Frigidaire Div.* v. *United States*, *supra*, p. 742:

> The sales price was for an article free of defects. The cost of remedying defects that later appeared, therefore, cannot be an "allowance" to the purchaser to be deducted from the sales price. It was not an "allowance", but a sum spent to give to the purchaser what the manufacturer had represented it was selling him, to wit, a sound article.

The legislative history of the provision in question demonstrates the correctness of this view. The House Committee Report on the Revenue Act of 1932, in which this provision first appeared, states (H. Rep. No. 708, 72d Cong., 1st Sess., p. 39 (1932) (1939-1 Cum. Bull. (Part 2) 457, 485)):

> This last provision [allowing the credit or refund] covers readjustments such as cash or quantity discounts, credit for return of goods or containers, and any other bona fide rebate or allowance *amounting to a change in the sales price.* [Italics added.]

An expenditure to correct defects under a manufacturer's warranty is clearly not a change in the sale price, but is a cost occasioned by the obligation which the manufacturer assumed.[7]

---

[7] The fact that the Treasury Department recommended, as taxpayer asserts (Pet. 14-15), that the corresponding provisions of the 1954 Code should be amended to provide that expenses incurred in fulfilling manufacturer's warranties should not be deemed "allowances", that separate charges for such warranties should be included in the sale price, and that such amendments should be stated to be declaratory of

The statutory language points to the same conclusion. Section 3443(a)(2) refers to a refund or credit of that part of the tax which is "proportionate to the part of the price which is refunded or credited." In correcting defects in a warranted article, the manufacturer has not "refunded or credited" any part of the sale price, but has merely placed the article in the condition in which it was warranted to be at the time of sale.* The sale price is fixed at the time of the original sale; it is the price fixed for an article wholly free from defects. If defects become apparent within the warranty period, the manufacturer must incur additional costs to place the article sold in sound condition; such costs are not a credit or refund of the sale price.

Taxpayer points to the fact that in two prior cases involving earlier years, (*General Motors Corp., Frigidaire Div.* v. *United States*, 121 F. Supp. 932, certiorari denied, 348 U. S. 942; *General Motors Corp., Frigidaire Div.* v. *United States*, 146 F. Supp. 220)

---

the original intent of Congress, hardly demonstrates any error in the decisions of the court below. Nor does the fact that Congress failed to enact such declaratory amendments establish that those decisions were not in accord with the legislative purpose.

* The applicable Regulations express the same view. Section 316.14 of Regulations 46 (Appendix, *infra*, p. 20) provides that if an article is returned to the manufacturer under a guaranty of quality or service, a refund of tax may be made in proportion to the amount refunded to the vendee. These Regulations do not provide for any refund of tax where an article is repaired by the manufacturer and retained by the vendee.

the Court of Claims held that expenditures incurred in fulfilling its additional warranty on the sealed refrigerating units constituted an "allowance" under Section 3443(a)(2), and that in the decisions below it has held that the expenses incurred in fulfilling the one year warranty and the additional warranty do not constitute an "allowance" under that section. Taxpayer asserts (Pet. 15) that there is therefore an "intra circuit conflict" justifying the exercise of certiorari jurisdiction. No such "intra circuit conflict" exists here, however, for the Court of Claims has expressly recognized the error in its decisions in the two prior cases and has repudiated those decisions. Certainly, in such circumstances, a lack of harmony in decisions of the Court of Claims does not call for the exercise of certiorari jurisdiction. Cf. *Wisniewski* v. *United States*, 353 U. S. 901, 902.

CONCLUSION

The decision below is correct and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

JOSEPH F. GOETTEN,
MYRON C. BAUM,
Attorneys.

SEPTEMBER, 1958

APPENDIX

Internal Revenue Code of 1939:

SEC. 3405. [as amended by Section 614, Revenue Act of 1942, c. 619, 56 Stat. 798] TAX ON MECHANICAL REFRIGERATORS AND SELF-CONTAINED AIR-CONDITIONING UNITS.

There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which sold:

(a) *Refrigerators.*—Household type refrigerators (for single or multiple cabinet installations) having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline.

(b) *Refrigerating Apparatus.*—Cabinets, compressors, condensers, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of or with, household type refrigerators of the kind described in subsection (a) except when sold as component parts of complete refrigerators or refrigerating or cooling apparatus.

(c) *Air-Conditioners.* — Self-contained air-conditioning units.

(26 U. S. C. 1952 ed., Sec. 3405.)

SEC. 3441. SALE PRICE.

(a) In determining, for the purpose of this chapter, the price for which an article

is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations.

* * * *

(26 U. S. C. 1952 ed., Sec. 3441)

SEC. 3443. CREDITS AND REFUNDS.

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

* * * *

(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

* * * *

(b) Credit or refund under subsection (a) shall be allowed or made only upon

compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

(26 U.S.C. 1952 ed., Sec. 3443)

Revenue Act of 1950, c. 994, 64 Stat. 906:

SEC. 606. IMPOSITION OF TAX ON QUICK-FREEZE UNITS.

So much of section 3405 (manufacturers' excise tax on mechanical refrigerators and air-conditioning units) as precedes subsection (c) is hereby amended to read as follows:

"SEC. 3405. TAX ON MECHANICAL REFRIGERATORS, QUICK-FREEZE UNITS, AND SELF-CONTAINED AIR-CONDITIONING UNITS.

"There shall be imposed on the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to 10 per centum of the price for which so sold:

"(a) *Refrigerators and Quick-Freeze Units.*—Household type refrigerators (for single or multiple cabinet installations) having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; household type units for the quick freezing or frozen storage of foods, operated by electricity, gas, kerosene, or gasoline; combinations of such household type refrigerators and units.

"(b) *Refrigerating and Freezing Apparatus.*—Cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls (hereinafter referred to as 'refrigerator components') for, or suitable for use as parts of or with, household type refrigerators or quick-freeze units of the kind described in subsection (a), except when sold as component parts of complete refrigerators, refrigerating or cooling apparatus, or quick-freeze units. * * * "

(26 U. S. C. 1952 ed., Sec. 3405.)

Treasury Regulations 46 (1940 ed.):

SEC. 316.12. *Exclusion of charges for transportation, delivery, etc., generally.*—Charges for transportation, delivery, insurance, installation, and other charges actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, are to be excluded in computing the tax.

No other additional charge may be excluded in computing the tax unless it can be shown by adequate records to the satisfaction of the Commissioner that such charge properly is not to be included as a manufacturing or selling expense, or is in no way incidental to placing the article in condition packed ready for shipment.

SEC. 316.13. *Discounts and adjustments, generally.*—Readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) can not be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the month in which the tax upon the sale is returned.

However, if the price upon which the tax was computed is subsequently readjusted, a proper credit may be taken against the tax due on a subsequent return, or an appropriate claim for refund may be filed. * * *

* * * *

Commissions to agents, or allowances, payments, or adjustments made to persons other than the manufacturer's vendee are not deductible from the sale price under any conditions for purposes of computing the tax.

SEC. 316.14. *Exchanges, etc.*—Where articles sold are returned to the manufacturer by his vendee and the original sale is entirely rescinded by refunding the entire amount paid, including tax, to the vendee, no tax is payable on the transaction and, if paid, the tax may be credited or refunded. * * * Where taxable articles sold are returned to the manufacturer by his vendee and only a part of the original sale price is refunded or credited to his vendee, the manufacturer is entitled to a tax credit computed on the portion of the sale price he refunds or credits to his vendee.

If an article is sold under a guaranty as to its quality or service and is thereafter returned and a rebate made pursuant to the guaranty, the manufacturer may claim credit or refund of such portion of the tax originally paid in respect of the article as is proportionate to the part of the price refunded to his vendee.

Where any taxable article is returned to the manufacturer thereof by his vendee for adjustment, replacement, or exchange, under a guaranty as to quality or service, and a new article given pursuant to the guaranty, free, or

at a reduced price, the tax shall be computed on the actual amount, if any, to be paid to the manufacturer for the new article.

U. S. GOVERNMENT PRINTING OFFICE: 1958 492712 420